AL-MAJALLA AL AHKAM AL ADALIYYAH
(The Ottoman Courts Manual (Hanafi))

BOOK XVI. ADMINISTRATION OF JUSTICE BY THE COURT.

INTRODUCTION

TERMS OF ISLAMIC JURISPRUDENCE.

- 1784. The phrase administration of justice embrace the judgement and the duties of the judge.
- 1785. The judge is a person appointed by the Sovereign for the purpose of dealing with and settling actions and disputes arising between the people in accordance with the terms of law.
- 1786. The judgement consists of the stopping and settlement of disputes by the judge. Judgements are of two classes.
  The first class consists of the Court giving judgement whereby the person against whom the judgement has been given is forced to give up the subject matter of the action as where he orders the thing claimed to be given. This class of judgement is called an obligatory judgement, or a judgement for something which is due.
  The second class consists of the Court forbidding the plaintiff to bring an action as where it informs the plaintiff that he has no right to bring an action, and that he is forbidden to do so. This class of judgement is called a judgement by way of dismissal.
- 1787. The subject matter of the judgement consists of the obligation imposed by the Court upon the party against whom judgement is given. Thus, an obligatory judgement consists of recognising the right of the plaintiff, and in an action by way of dismissal consists of obliging the plaintiff to give up his action.
- 1788. The losing party is the person against who judgement is given.
- 1789.The successful party is the person in whose favour judgement is given.
- 1790. Arbitration consists of the parties to an action agreeing together to select some third person to settle the question at issue between them, who is called an arbitrator.
- 1791. A deputy defendant is an agent appointed by the Court to represent a defendant who fails to appear in Court.

CHAPTER I. JUDGES.

SECTION I. QUALITIES REQUISITE IN A JUDGE.

- 1792. The judge must be intelligent, upright, reliable and firm.
- 1793. The judge must have a knowledge of Islamic Law and jurisprudence and of the rules of procedure, and must be able to decide and settle actions in accordance therewith.
- 1794. The judge must be of perfect understanding. Consequently, any judicial act performed by a minor or an imbecile or a blind man or a person so deaf that he cannot hear the statements of the parties when speaking loudly, is invalid.

SECTION II. CONDUCT OF JUDGES.

- 1795. The judge must abstain from any act or deed of a mature injurious to the dignity of the Court, such as engaging or selling, or making jokes while in Court.
- 1796. The judge may not accept a present from either of the parties.
- 1797. The judge may not accept the hospitality of either of the parties.
- 1798. The judge must abstain from any act during the trial likely to arouse suspicion or cause misunderstanding, such as receiving one of the parties alone in his house, or retiring with one of them with his hand or his eye or his head, or speaking to one of them secretly or in a language not understood by the other.
- 1799. The judge must be impartial towards the two parties. Consequently, the judge must observe complete impartiality and equality towards the two parties in everything relating to the trial of the action, such as causing them to sit down during the course of the trial, and when looking towards or addressing them and this whether one of the parties is a person of high rank and the other of low estate.

SECTION III. DUTIES OF JUDGES.

- 1800. The judge is the representative of the Sovereign for the purpose of carrying of the trial giving judgement.
- 1801. The jurisdiction and powers of the judge are limited by time and place and certain matters of exception.yvT
  Examples:-
  (1). A judge appointed for a period of one year may only give judgement during that year. He may not give judgement before the year commences or after the expiration thereof.
  (2). A judge appointed for a certain district may give judgement in any place in such district. He may not, however, give judgement elsewhere. A judge appointed to give judgement in a particular Court may only give judgement in that Court. He may not give judgement elsewhere.
  (3). If an order is issued by the sovereign authority that actions relating to a particular matter shall not be heard in the public interest, the judge may not try such action. Action, the judge may be authorised to hear certain matters only in a particular Court and no other. The judge may only try those cases he is authorised to hear and give judgement thereon.
  (4). An order is issued by sovereign authority to the effect that in a certain matter the opinion of a certain jurist is most in the interest of the people, and most suited to the needs of the moment, and that action should be taken in accordance therewith. The judge may not act in such a matter in accordance with the opinion of a jurist which is in conflict with that of the jurist in question. If he does so, the judgement will not be executory.
- 1802. If two judges are appointed jointly to hear and give judgement in an action, one of them alone may not try such action and deliver judgement. If he does so, the judgement is not executory. (See Article 1465).
- 1803. If there are various judges in one particular place, and one of the parties desires the case to be tried by one judge and the other wishes the case to be tried by another, and a difference of opinion occurs between them in the matter, the judge selected by the defendant shall be preferred.
- 1804. If a judge is removed from his post, but the news of his removal is not communicated to him for some time, any cases heard and decided by him during that period are valid. A judgement issued by him after the news of his removal has been communicated to him is invalid.
- 1805. A judge who is duly authorised may appoint a person as deputy judge and may dismiss him. He may not do so, if he is not duly authorised. If he himself is dismissed or dies, his deputy is not likewise dismissed. (See Article 1466). Consequently, if a judge in a certain district dies, the action in that district dies, the action in that district shall be tried by the deputy of the deceased judge, until the arrival of a new judge.
- 1806. The judge may decide a case on evidence heard by the judge. Thus, if the judge has heard evidence in an action and communicates it to his deputy, the latter may give judgement without rehearing the evidence. Similarly, if the deputy of a judge is authorised to give judgement, he may hear evidence on a certain matter and refer it to the judge, and the latter may give judgement thereon without rehearing the evidence. If a person who is not authorised to give judgement, however, but only to hear evidence for the purpose of investigating and inquiring into a matter, refers a question to the judge the latter may not give judgement, but must hear the evidence himself.
- 1807. A judge of the district may hear actions relating to land situated in another district. But as stated in the Book on Actions, the boundaries thereof must be set forth as required by law.

- 1808. The person in whose favour judgement is given must not be an ascendant or descendant or the wife of the judge, nor his partner, nor a private employee in respect to the property which is the subject matter of the judgement, nor a person who lives at the expense of the judge. Consequently, the judge may not hear a case relating to one of such persons, nor give judgement in his favour.
- 1809. If the judge of a town or the persons connected with him as stated in the preceding Article, are concerned in an action with any of the inhabitants of such town, the case shall be heard by some other judge in the town, if one is to be found there. If there is no other judge in the town, the case may be tried by an arbitrator to be appointed by the parties, or, if the judge is authorised to appoint a representative the case shall be heard by him or in the case may be tried by the judge of an adjoining district. If the parties do not agree to settle the matter in any one of the ways mentioned above, they may ask the sovereign authority to delegate some person empowered to deal with the question.
- 1810. In the hearing of actions, the Court shall deal with them in order of priority. The Court may, however, expedite the hearing of an action when it is in the interests of justice to do so.
- 1811. A judge may, when necessary, ask the opinion of some other person on a point of law.
- 1812. A judge may not give judgement when in such a condition that he cannot think clearly, as where he is in trouble, or suffering from hunger or sleeplessness.
- 1813. A Judge may not delay a case unduly by reason of investigations as to the facts.
- 1814. The judge is responsible for keeping a register in Court and recording therein all judgements given and documents issued in such a manner as to be free from any irregularity. In the event of the judge being removed, he must hand over such register to his successor either personally or through some person in whom he has confidence.

SECTION IV. THE HEARING OF AN ACTION.

- 1815. the judge must hold the trial in public. He may not, however, reveal the nature of the judgement before it is pronounced.
- 1816. When the parties are present in Court for the purposes of the trial, the judge shall first of all call upon the plaintiff to state his case. If he has previously reduced his claim to writing it shall be read over and confirmed by the plaintiff. He shall then call upon the defendant to answer. Thus, he shall inform the defendant that the plaintiff makes such and such claim against him, and shall ask the defendant to reply
- 1817. If the defendant admits the claim, the judge shall give judgement on the admission. If he denies, the judge shall call upon the plaintiff for his evidence.
- 1818. If the plaintiff proves his case by evidence, the judge shall give judgement accordingly. if he cannot prove it, he has a right to the oath, and if he asks to exercise such right, the judge shall accordingly tender the oath to the defendant.
- 1819. If the defendant swears the oath, or if the plaintiff does not ask for the oath to be administered, the judge shall order the plaintiff to give up his claim upon the defendant.
- 1820. If the defendant refuses to take the oath, the judge shall deliver judgement based upon such refusal. If the defendant states that he is prepared to swear an oath, after judgement has been so delivered, the judgement shall remain undisturbed.
- 1821. The content of a judgement or of a document issued by the judge of a Court in the ordinary way and which is free from any taint of forgery or fraud, may be acted upon and judgement given thereon, without the necessity for any proof by evidence.
- 1822. If the defendant persists in keeping silence and refuses to answer either in the affirmative or negative, after being questioned as stated above, his silence in considered to amount to a denial.
  If he states that he neither confesses nor denies, his answer is considered to amount to a denial.
  In both cases the plaintiff shall be called upon to produce evidence.
- 1823. If the defendant instead of admitting or denying the plaintiff's claim, puts forward a counter claim, action shall be taken in accordance with the matter mentioned in the Book on Actions and book on Evidence.
- 1824. Neither party may interrupt the other while he is making a statement. If he does so, he shall be prohibited therefrom by the Court.
- 1825. The Court shall provide a competent and reliable interpreter for the translation of statements made by any person who does not know the language of the parties.
- 1826. In the case of actions brought by relatives or in cases where there is a possibility of the parties coming to a settlement, the judge shall advise the parties one or twice to come to a settlement. If they agree, a settlement shall be drawn up in accordance with the terms of the Book on Settlements. If they do not so agree, the case shall be tried out.
- 1827. After the judge has concluded the trial, he shall give judgement and make it known to the parties. He Shall then draw up a formal judgement containing full reasons for the decision and orders given. A copy thereof shall be given to the successful party and, if necessary, a copy to the party losing the action.
- 1828. Once the judge is fully in possession of the facts and reasons for the judgement, he may not delay promulgation thereof.

CHAPTER II. JUDGEMENTS

SECTION I. CONDITIONS ATTACHING TO A JUDGEMENT.

- 1829. No judgement may be issued unless an action has been instituted. Thus, for a judge to give a judgement in any matter where the rights of the public are affected, an action must have been brought by one person against another in respect to that matter. Any judgement issued which is not based upon an action is invalid.
- 1830. The parties must be present when judgement is given. That is to say, the parties having been present during the hearing of the action, must be present also when judgement is given. But if any person brings an action against some other person and the defendant admits the claim, and leaves the Court before judgement is pronounced, the judge may pronounce judgement in his absence, based upon the admission. Again, if the defendant denies the plaintiff's action, and the plaintiff comes into Court and brings evidence to prove his claim, and the defendant leaves the Court before the enquiry as to the credibility of the witness is commenced and before judgement is given, the judge may proceed to the enquiry as to the credibility of the witness, and pronounce judgement in his absence.
- 1831. If the defendant is personally present in Court after evidence has been given in the presence of his representative, the judge may give judgement against him on such evidence. On the other hand, if the representative of the defendant is present and evidence has been given in the presence of the defendant, the judge may give judgement against the representative after hearing the evidence.
- 1832. If an action is brought against the whole of the heirs of a deceased person, and the evidence has been given in the presence of one of them, and such heir leaves before judgement is pronounced, the judge may give judgement against any other heir who may be summoned to be present on such evidence. There is no need for the evidence to be repeated.

SECTION II. JUDGEMENT BY DEFAULT.

- 1833. The defendant shall be summoned to appear before the Court by the judge upon the application of the plaintiff. If he fails to appear, either personally or through a representative, in the absence of any valid excuse, he may be forced to appear.
- 1834. If the defendant fails to appear, either personally, or through a representative, and it is not possible to bring him into Court, the Court shall, on the application of the plaintiff, issue a summons to him on three separate occasions to appear in Court, and, upon his failing to appear, the judge shall inform him that a representative will be appointed for him, and that the case for the plaintiff together with his evidence, will be heard. If the defendant persists in his refusal to appear, either personally or through a representative, the judge shall appoint a person as his representative in order to safeguard his interests. The case for the plaintiff, together with his evidence, shall then be heard in the presence of the representative, and, if proved, judgement shall be issued accordingly.
- 1835. A judgement issued by default as mentioned above shall be served upon the defendant.
- 1836. If a person against whom a judgement has been issued by default appears in Court and shows that he has a defence to the plaintiff's claim, his defence shall be heard and action taken as may be necessary. If he has no defence to the claim, or if he brings a defence which fails, the judgement given shall be put into execution.

CHAPTER III. RETRIAL.

- 1837. An action in respect to which a judgement has validly been given, that is to say, a judgement which contains the reasons and grounds therefor, may not be heard again.
- 1838. If any person against whom judgement has been given alleges that such judgement is contrary to the rules of law and gives the reasons therefor, asking for the case to be heard in appeal, the judgement, if found to be in accordance with law, shall be confirmed. If not, the case will be heard in appeal.
- 1839. If the person against whom judgement has been given is dissatisfied with such judgement, and asks for the rectification thereof, such judgement shall be examined, and, if it is found to be in accordance with law, shall be confirmed. If not, it shall be reversed.
- 1840. A defence may be valid before judgement and after judgement. Consequently, if any person against whom judgement has been given, shows that he has a sound defence thereto, and asks for retrial of the action, his defence shall be heard in the presence of the person in whose favour judgement has been given, and the matter tried out.yvT " Example :- A brings an action against B alleging that a house in B's possession belongs to him, and that he inherited it from his father and proves his case. Judgement is given in his favour. B then sets up the defence that A's father sold the house to his father and produces a valid title-deed. B's defence will be heard, and if proved, the original judgement will be reversed and his action dismissed.

CHAPTER IV. ARBITRATION.

- 1841. Actions relating to rights concerning property may be settled by arbitration.
- 1842. The decision of an arbitrator is valid and executory only in respect to the persons who have appointed him, and the matters he has been appointed to decide. He may not have reference to any person or deal with any matters other than those included in the terms of reference.
- 1843. More than one arbitrator may be appointed, that is to say, two or more persons may be appointed to give a decision in respect to one matter. Both plaintiff and defendant may each validly appoint an arbitrator.
- 1844. In the event of several arbitrators being appointed as above, their decision must be unanimous. One alone may not give a decision.
- 1845. The arbitrators may, if they are duly authorised thereunto by the parties, appoint another person to act as arbitrator. They may not do so otherwise.
- 1846. If the arbitration is limited as to time it ceases to be of effect after the expiration of such time.yvT Example:- An arbitrator appointed to decide a matter within a period of one month as from a certain date, may only decide such matter within that period. He cannot give a decision after the expiration of that month. If he does so, the judgement will not be executory.
- 1847. Either of the parties may dismiss the arbitrator before he has given his decision. If the parties have appointed an arbitrator, however, and such appointment has been confirmed by a Court duly authorised thereunto, the arbitrator is considered to be a representative of the Court and cannot be dismissed.
- 1848. All decisions by arbitrators as regards the persons and matter in respect to which they have been appointed are binding and executory to the same extent as the decisions by the Courts concerning persons within their jurisdiction. Consequently, a decision validly given by the arbitrators in accordance with the rules of law is binding on all parties.
- 1849. A decision by an arbitrator, upon submission to a properly constituted Court, shall be accepted and confirmed, if given in accordance with law. Otherwise, it shall not be so confirmed.
- 1850. The parties appointing the arbitrators may authorise the arbitrators, if they think fit, to make a settlement, and such arbitrators may then make a valid settlement. Thus, if each of the parties appoint a person to act as arbitrator with power to dispose of the matter in dispute by way of settlement, and such arbitrators duly arrive at a settlement in conformity with the terms of the Book on Settlements, such settlement and arrangement is binding on both parties.
- 1851. Should an authorised person act as arbitrator in a dispute and give a decision and the parties later agree to adopt his decision, such decision is executory. (See Article 1453).

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